IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5557 OF 2004

Sau Rajeshwari K. Apte ... Petitioner

v/s

Janhavi Thatte and ors. ... Respondents

Ms Gauri Godse for Petitioner.

Mr V.W. Apte i/b Mr D.R. Shah for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 29TH JUNE 2005.

P.C. :-

1. By this petition, the original plaintiff challenges an order passed by the Appeal Court rejecting the application for amendment in the plaint. The plaintiff had filed the suit for decree of possession against the defendants. In that suit, the plaintiff has stated that the suit is filed under the provisions of the Bombay Rent, Hotel and Lodging House Rates Control Act 1947 for decree of possession against the defendants. The suit was dismissed by order dated 20th July 2000. The appeal was filed within the period of limitation. The application for amendment in the plaint was filed before the Appeal Court three years thereafter on 3rd November 2003. The first reason that was given for making an application for amendment in the plaint is that due to inadvertence of the lawyer and due to misunderstanding, in the plaint it is pleaded that the provisions of the Rent Act are applicable and the suit was filed under the Rent Act and therefore, those portions of the plaint where provisions of the Rent Act and grounds under the Rent Act were pleaded were to be deleted. Twenty-nine persons were to be added as plaintiffs because according to the plaintiffs, they were legal representatives of the original owner of the property. Whether they have given their consent for

being added as plaintiffs is not stated in the application for amendment. An amendment was sought in the plaint saying that possession of the defendants is unauthorised and therefore, they are not entitled to be in possession of the suit. In short, the application was for conversion of suit filed under the Rent Act for a decree of possession against the tenants into a suit on title for a decree of possession. The Appeal Court found that the amendment tends to change the nature of the suit and rejected the application. The learned counsel appearing for petitioner relying on a judgment of the Division Bench of this Court in the case of Benisham M. Khetan v/s Mahadeo T. Borkar, reported in AIR 1985 Bombay 462 submits that a Court has the power to permit an amendment in the plaint which ousts the jurisdiction of the Court. According to the learned counsel, though by granting the amendment in the plaint, the Trial Court could loose the jurisdiction to try the suit, still the amendment does not alter the nature of the suit or the reliefs claimed therein and therefore according to the learned counsel, the amendment should have been granted.

2. After having heard the learned counsel appearing for petitioner for considerable length of time, I find that this is a frivolous petition filed by the petitioner. When the appellant - plaintiff makes an

application for amendment in the plaint before the appeal Court, first duty he has to discharge is to satisfy the Court that for sufficient cause he could not include these pleadings in his plaint and that he could not also include these pleadings in his plaint by amendment while the suit was pending before the Trial Court. In so far as this aspect of the matter is concerned, the only statement to be found in the application is that the pleadings that the suit was under the Rent Act were made due to inadvertence and misunderstanding of the lawyer. But, the affidavit of the lawyer who drafted the plaint is not produced. In short, there is no material produced on record on the basis of which the Court can accept this explanation. Then it is stated that the plaintiff thought that this is a mistake committed by the lawyer because the suit was dismissed by the Trial Court treating it to be a suit under the Rent Act but that was done in July 2000. Thereafter, the same plaintiff filed appeal before the Appeal Court. In that appeal, it is nowhere explained as to how this mistake and misunderstanding were discovered when the appeal was filed and why the petitioner took three long years to make an application for amendment. Normally the Court does not grant amendment unless there are valid reasons, especially an amendment which changes the nature of the suit. in the present case, definitely the amendment sought in the

plaint has the effect of changing the nature of the suit because if the amendment is granted, it will no longer be a suit filed under the Rent Act for decree of possession but it will be a suit filed on title for decree of possession against a person who has no authority to be in possession. The result of granting amendment would be setting aside the decree that is passed by the Trial Court because if the amendment is granted in the plaint, the Trial Court which deals with matters under Rent Act will loose the jurisdiction to entertain the suit and therefore, the decree will not survive. Thus, the amendment sought in the plaint had drastic consequences and obviously therefore, such an amendment which has drastic consequences could not have been allowed by the Appeal Court without the appellants making out a case for grant of amendment at such a late stage. As indicated above, the plaintiff has not even given reasons for making the application for amendment at such a late stage. Taking overall view of the matter therefore, in my opinion, really speaking, making of the application for amendment in the plaint at such a late stage amounts to abusing the process of the Court and therefore, the Appeal Court has rightly rejected the application. In the result therefore, petition fails and is dismissed. Petitioner is directed to pay as and by way of costs of this petition Rs.10,000/- to the respondents.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.